

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 929 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ARJANBHAI VALJIBHAI

Versus

NATHABHAI GOVINDBHAI

Appearance:

MR YS LAKHANI for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1

MR CC BHALJA for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/12/98

ORAL JUDGEMENT

1. This revision application is directed against the order of Civil Judge (S.D.), Porbandar dated 14-5-1992 in Regular Civil Suit No.176/91 under which the application filed by the respondent No.1 under Order 1 Rule 10 C.P.C. was granted and he was ordered to be impleaded as defendant No.5 in the suit.

2. Learned counsel for the petitioner contended that the trial court has passed a cryptic order. The matter of impleading a person as party-defendant to the suit is a serious matter as the plaintiff is dominus litis and without deciding the matter on merits, no such order could have been passed. It has next been contended that the defendant No.5-respondent No.1 is neither necessary nor proper party to this suit. Lastly it is contended that the defendant No.5-respondent No.1 has filed the suit earlier to the present suit out of which this revision application has arisen i.e. Regular Civil Suit No.150/87 in the Court of Civil Judge (J.D.) Porbandar and otherwise also learned trial court has committed serious illegality in passing of the impugned order.

3. Learned counsel for the defendant No.5-respondent No.1 contended that the order is non-speaking but as the defendant No.5-respondent No.1 is necessary party to the suit, this Court may not interfere in the matter in its revisional power under section 115, C.P.C.. If the first contention is accepted then the matter has to be remanded and again the Court will pass the order after hearing the parties to implead him as party as he is necessary party to the suit. So it will be only an exercise in futility or unnecessary wastage of court's valuable time in deciding this matter, which is ultimately to be decided in favour of defendant No.5-respondent No.1. Carrying this contention further, learned counsel for the defendant No.5-respondent No.1 submitted that the plaintiff-petitioner was the highest bidder in the auction of the disputed property and that auction has been quashed and set aside by the State Government on application of defendant No.5-respondent No.1. That order passed by the State Government has been challenged by the plaintiff-petitioner in the suit and as such the defendant No.5 is necessary party to the suit.

4. Learned counsel for the State, Shri C.C. Bhalja, contended that it is a lis in between the plaintiff-petitioner and the defendant No.5-respondent No.1, and the State of Gujarat has unnecessarily been impleaded as party to this revision application. The State of Gujarat is not necessary or proper party to this revision application and by impleading it as party it has unnecessarily been put to incur the expenses of litigation.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. I find that the order passed by the learned trial court is a cryptic order but only on this ground I do not

consider it to be appropriate case where the order impugned has to be set aside by this Court under section 115, C.P.C., 1908. In view of the admitted facts of the case, I am satisfied that when on the application of the defendant No.5-respondent No.1 the auction has been set aside by the State Government he is necessary party to the suit filed by the plaintiff-petitioner.

7. In the result, this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

8. As the State of Gujarat is neither necessary nor proper party to this revision application, the petitioner is directed to pay Rs.500/- as costs of this revision application to the State of Gujarat. No order as to costs of this litigation in favour of defendant No.5-respondent No.1.

zgs/-